

ORDER NO. 3144

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Contract 123 (MC2015-52)
Negotiated Service Agreement

Docket No. CP2015-80

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued March 9, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 123, February 25, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2535, the Commission approved the Priority Mail Contract 123 negotiated service agreement (Existing Agreement).² On February 25, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. On February 26, 2016, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The certified statement states that the amended prices will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *Id.* Attachment B.

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the certified statement, and the financial model filed under seal. PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

² See Docket Nos. MC2015-52 and CP2015-80, Order Adding Priority Mail Contract 123 to the Competitive Product List, June 9, 2015 (Order No. 2535).

³ Order No. 3101, Notice and Order Concerning Amendment to a Priority Mail Negotiated Service Agreement, February 26, 2016.

⁴ Public Representative Comments on Postal Service Notice of Change in Prices Pursuant to Amendment of Priority Mail Contract 123, March 8, 2016 (PR Comments). The Public Representative also filed a motion for late acceptance of her comments. Motion of Public Representative for Late Acceptance of Comments, March 8, 2016 (Motion). The Motion is granted.

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment amends three sections of the Existing Agreement, sections I.F., I.I., and I.J.1. Notice, Amendment at 1.⁵ The Amendment to section I.F. makes changes to the tier thresholds in Table 2. *Id.* at 2. The Amendment to section I.I. amends the price tables, and the Amendment to section I.J.1 amends the annual adjustment provision.⁶ *Id.* at 3.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate

⁵ See also Docket Nos. MC2015-52 and CP2015-80, Request of the United States Postal Service to Add Priority Mail Contract 123 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, May 29, 2015, Attachment B at 2-4 (Initial Request).

⁶ The Commission notes that the annual adjustment provision appears in section I.J.1 of the Existing Agreement; however, the Amendment mislabels that as section G in the Amendment. Compare Initial Request, Attachment B at 4 and Amendment at 1 with Amendment at 3.

share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See also 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.J.1 of the amended agreement should allow the amended agreement's revenue to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective one business day after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire three years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁷

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 123 negotiated service agreement, as amended.

⁷ Initial Request, Attachment B at 4. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary